

AMENDED IN ASSEMBLY MARCH 18, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2580**

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**Introduced by Assembly Member Olsen**

February 19, 2016

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An act to amend ~~Section 300 of~~ Sections 366.21, 366.22, 366.25, and 366.26 of, and to add Section 398 to, the Welfare and Institutions Code, relating to juveniles.

LEGISLATIVE COUNSEL’S DIGEST

AB 2580, as amended, Olsen. ~~Homeless youth: dependency~~  
*Dependency proceedings.*

*Existing law establishes the jurisdiction of the juvenile court, which may adjudge children to be dependents of the court under certain circumstances, including when the child suffered or there is a substantial risk that the child will suffer serious physical harm, or a parent fails to provide the child with adequate food, clothing, shelter, or medical treatment. Existing law establishes the grounds for removal of a dependent child from the custody of his or her parents or guardian, and establishes procedures to determine temporary placement of a dependent child, including placement with a licensed foster family home. Existing law prescribes various hearings, including specified review hearings, and other procedures for these purposes. If the court orders the removal of a minor who is adjudged to be a dependent child of the court, existing law requires the court to order the care, custody, control, and conduct of the child to be under the supervision of a social worker who may place the child in specified settings, including a foster home in which the child has been placed before an interruption in foster care, if that placement is in the best interest of the child and space is available or*

*with a foster family agency to be placed in a suitable licensed foster family home or certified family home.*

*The bill would require the social worker, at the time a child is being considered for placement in a foster home, to provide to a foster parent or foster parents of the dependent child specified information, including notification that the foster parent has the right to be present at the dispositional hearing and at any hearing thereafter at which the status of the child is at issue. By imposing additional duties on county welfare agencies, this bill would impose a state-mandated local program.*

*If a court orders the removal of a child from the physical custody of his or her parent, existing law generally requires the court to order the return of the child to the physical custody of his or her parent at the review hearings held 6 months, 12 months, 18 months, and 24 months, respectively, after the initial disposition hearing, unless the court finds that the return of the child would create a substantial risk of detriment, or substantial danger, to the safety, protection, or physical or emotional well-being of the child. Existing law requires the court to specify the factual basis for its conclusion that the return of the child would create a substantial risk of detriment, or substantial danger, to the safety, protection, or physical or emotional well-being of the child.*

*This bill would require the court to specify in writing the factual basis for its conclusions.*

*If the court determines, based on the assessments provided to the court, by a clear and convincing standard, that it is likely the child will be adopted, existing law requires the court to terminate parental rights and order the child placed for adoption, unless certain circumstances exist, including that the court finds a compelling reason for determining that termination would be detrimental to the child due to one or more specified circumstances. If the court finds that termination of parental rights would be detrimental to the child, existing law requires the court to state its reasons in writing or on the record. Existing law authorizes a child who has not been adopted after the passage of at least 3 years from the date the court terminated parental rights and for whom the court has determined that adoption is no longer the permanent plan to petition the juvenile court to reinstate parental rights pursuant to specified procedures. Existing law requires the court to grant the petition if it finds by clear and convincing evidence that the child is no longer likely to be adopted and that reinstatement of parental rights is in the best interests of the child. If the court reinstates parental rights over a child who is under 12 years of age, existing law requires the*

*court to specify the factual basis for its conclusion that it is in the best interest of the child to reinstate parental rights.*

*The bill would instead require the court to state its reasons in writing and on the record if the court finds that termination of parental rights would be detrimental to the child, and would require the court to specify in writing the factual basis for its conclusion that it is in the best interest of the child to reinstate parental rights if the court finds by clear and convincing evidence that the child is no longer likely to be adopted.*

*The bill would make other technical, nonsubstantive changes.*

*The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.*

*This bill would provide that no reimbursement is required by this act for a specified reason.*

~~Existing law provides that a child may come within the jurisdiction of the juvenile court and become a dependent child of the court in certain cases, including when the child is abused, a parent or guardian fails to adequately supervise or protect the child, as specified, or a parent or guardian fails to provide the child with adequate food, clothing, shelter, or medical treatment.~~

~~This bill would make technical, nonsubstantive changes to those provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.  
State-mandated local program: ~~no~~-yes.

*The people of the State of California do enact as follows:*

- 1     SECTION 1. Section 366.21 of the Welfare and Institutions
- 2     Code is amended to read:
- 3     366.21. (a) Every hearing conducted by the juvenile court
- 4     reviewing the status of a dependent child shall be placed on the
- 5     appearance calendar. The court shall advise all persons present at
- 6     the hearing of the date of the future hearing and of their right to
- 7     be present and represented by counsel.
- 8     (b) Except as provided in Sections 294 and 295, notice of the
- 9     hearing shall be provided pursuant to Section 293.
- 10    (c) At least 10 calendar days prior to the hearing, the social
- 11    worker shall file a supplemental report with the court regarding
- 12    the services provided or offered to the parent or legal guardian to

1 enable him or her to assume custody and the efforts made to  
2 achieve legal permanence for the child if efforts to reunify fail,  
3 including, but not limited to, efforts to maintain relationships  
4 between a child who is 10 years of age or older and has been in  
5 out-of-home placement for six months or longer and individuals  
6 who are important to the child, consistent with the child's best  
7 interests; the progress made; and, where relevant, the prognosis  
8 for return of the child to the physical custody of his or her parent  
9 or legal guardian; and shall make his or her recommendation for  
10 disposition. If the child is a member of a sibling group described  
11 in subparagraph (C) of paragraph (1) of subdivision (a) of Section  
12 361.5, the report and recommendation may also take into account  
13 those factors described in subdivision (e) relating to the child's  
14 sibling group. If the recommendation is not to return the child to  
15 a parent or legal guardian, the report shall specify why the return  
16 of the child would be detrimental to the child. The social worker  
17 shall provide the parent or legal guardian, counsel for the child,  
18 and any court-appointed child advocate with a copy of the report,  
19 including his or her recommendation for disposition, at least 10  
20 calendar days prior to the hearing. In the case of a child removed  
21 from the physical custody of his or her parent or legal guardian,  
22 the social worker shall, at least 10 calendar days prior to the  
23 hearing, provide a summary of his or her recommendation for  
24 disposition to any foster parents, relative caregivers, and certified  
25 foster parents who have been approved for adoption by the State  
26 Department of Social Services when it is acting as an adoption  
27 agency or by a county adoption agency, community care facility,  
28 or foster family agency having the physical custody of the child.  
29 The social worker shall include a copy of the Judicial Council  
30 Caregiver Information Form (JV-290) with the summary of  
31 recommendations to the child's foster parents, relative caregivers,  
32 or foster parents approved for adoption, in the caregiver's primary  
33 language when available, along with information on how to file  
34 the form with the court.

35 (d) Prior to any hearing involving a child in the physical custody  
36 of a community care facility or a foster family agency that may  
37 result in the return of the child to the physical custody of his or  
38 her parent or legal guardian, or in adoption or the creation of a  
39 legal guardianship, or in the case of an Indian child, in consultation  
40 with the child's tribe, tribal customary adoption, the facility or

1 agency shall file with the court a report, or a Judicial Council  
2 Caregiver Information Form (JV-290), containing its  
3 recommendation for disposition. Prior to the hearing involving a  
4 child in the physical custody of a foster parent, a relative caregiver,  
5 or a certified foster parent who has been approved for adoption by  
6 the State Department of Social Services when it is acting as an  
7 adoption agency or by a county adoption agency, the foster parent,  
8 relative caregiver, or the certified foster parent who has been  
9 approved for adoption by the State Department of Social Services  
10 when it is acting as an adoption agency or by a county adoption  
11 agency, may file with the court a report containing his or her  
12 recommendation for disposition. The court shall consider the report  
13 and recommendation filed pursuant to this subdivision prior to  
14 determining any disposition.

15 (e) (1) At the review hearing held six months after the initial  
16 dispositional hearing, but no later than 12 months after the date  
17 the child entered foster care as determined in Section 361.49,  
18 whichever occurs earlier, after considering the admissible and  
19 relevant evidence, the court shall order the return of the child to  
20 the physical custody of his or her parent or legal guardian unless  
21 the court finds, by a preponderance of the evidence, that the return  
22 of the child to his or her parent or legal guardian would create a  
23 substantial risk of detriment to the safety, protection, or physical  
24 or emotional well-being of the child. The social worker shall have  
25 the burden of establishing that detriment. At the hearing, the court  
26 shall consider the criminal history, obtained pursuant to paragraph  
27 (1) of subdivision (f) of Section 16504.5, of the parent or legal  
28 guardian subsequent to the child's removal to the extent that the  
29 criminal record is substantially related to the welfare of the child  
30 or the parent's or guardian's ability to exercise custody and control  
31 regarding his or her child, provided the parent or legal guardian  
32 agreed to submit fingerprint images to obtain criminal history  
33 information as part of the case plan. The court shall also consider  
34 whether the child can be returned to the custody of his or her parent  
35 who is enrolled in a certified substance abuse treatment facility  
36 that allows a dependent child to reside with his or her parent. The  
37 fact that the parent is enrolled in a certified substance abuse  
38 treatment facility shall not be, for that reason alone, prima facie  
39 evidence of detriment. The failure of the parent or legal guardian  
40 to participate regularly and make substantive progress in

1 court-ordered treatment programs shall be prima facie evidence  
2 that return would be detrimental. In making its determination, the  
3 court shall review and consider the social worker's report and  
4 recommendations and the report and recommendations of any child  
5 advocate appointed pursuant to Section 356.5; and shall consider  
6 the efforts or progress, or both, demonstrated by the parent or legal  
7 guardian and the extent to which he or she availed himself or  
8 herself of services provided, taking into account the particular  
9 barriers to a minor parent or a nonminor dependent parent, or an  
10 incarcerated, institutionalized, detained, or deported parent's or  
11 legal guardian's access to those court-mandated services and ability  
12 to maintain contact with his or her child.

13 (2) Regardless of whether the child is returned to a parent or  
14 legal guardian, the court shall specify *in writing* the factual basis  
15 for its conclusion that the return would be detrimental or would  
16 not be detrimental. The court also shall make appropriate findings  
17 pursuant to subdivision (a) of Section 366; and, where relevant,  
18 shall order any additional services reasonably believed to facilitate  
19 the return of the child to the custody of his or her parent or legal  
20 guardian. The court shall also inform the parent or legal guardian  
21 that if the child cannot be returned home by the 12-month  
22 permanency hearing, a proceeding pursuant to Section 366.26 may  
23 be instituted. This section does not apply in a case where, pursuant  
24 to Section 361.5, the court has ordered that reunification services  
25 shall not be provided.

26 (3) If the child was under three years of age on the date of the  
27 initial removal, or is a member of a sibling group described in  
28 subparagraph (C) of paragraph (1) of subdivision (a) of Section  
29 361.5, and the court finds by clear and convincing evidence that  
30 the parent failed to participate regularly and make substantive  
31 progress in a court-ordered treatment plan, the court may schedule  
32 a hearing pursuant to Section 366.26 within 120 days. If, however,  
33 the court finds there is a substantial probability that the child, who  
34 was under three years of age on the date of initial removal or is a  
35 member of a sibling group described in subparagraph (C) of  
36 paragraph (1) of subdivision (a) of Section 361.5, may be returned  
37 to his or her parent or legal guardian within six months or that  
38 reasonable services have not been provided, the court shall continue  
39 the case to the 12-month permanency hearing. *The court shall*  
40 *specify in writing the factual basis for its conclusion that there is*

1 *a substantial probability that the child may be returned to his or*  
2 *her parent or legal guardian within six months or that reasonable*  
3 *services have not been provided, justifying continuance to the*  
4 *12-month permanency hearing.*

5 (4) For the purpose of placing and maintaining a sibling group  
6 together in a permanent home, the court, in making its  
7 determination to schedule a hearing pursuant to Section 366.26  
8 for some or all members of a sibling group, as described in  
9 subparagraph (C) of paragraph (1) of subdivision (a) of Section  
10 361.5, shall review and consider the social worker's report and  
11 recommendations. Factors the report shall address, and the court  
12 shall consider, may include, but need not be limited to, whether  
13 the sibling group was removed from parental care as a group, the  
14 closeness and strength of the sibling bond, the ages of the siblings,  
15 the appropriateness of maintaining the sibling group together, the  
16 detriment to the child if sibling ties are not maintained, the  
17 likelihood of finding a permanent home for the sibling group,  
18 whether the sibling group is currently placed together in a  
19 preadoptive home or has a concurrent plan goal of legal  
20 permanency in the same home, the wishes of each child whose  
21 age and physical and emotional condition permits a meaningful  
22 response, and the best interests of each child in the sibling group.  
23 The court shall specify *in writing* the factual basis for its finding  
24 that it is in the best interests of each child to schedule a hearing  
25 pursuant to Section 366.26 within 120 days for some or all of the  
26 members of the sibling group.

27 (5) If the child was removed initially under subdivision (g) of  
28 Section 300 and the court finds by clear and convincing evidence  
29 that the whereabouts of the parent are still unknown, or the parent  
30 has failed to contact and visit the child, the court may schedule a  
31 hearing pursuant to Section 366.26 within 120 days. The court  
32 shall take into account any particular barriers to a parent's ability  
33 to maintain contact with his or her child due to the parent's  
34 incarceration, institutionalization, detention by the United States  
35 Department of Homeland Security, or deportation. If the court  
36 finds by clear and convincing evidence that the parent has been  
37 convicted of a felony indicating parental unfitness, the court may  
38 schedule a hearing pursuant to Section 366.26 within 120 days.

39 (6) If the child had been placed under court supervision with a  
40 previously noncustodial parent pursuant to Section 361.2, the court

1 shall determine whether supervision is still necessary. The court  
2 may terminate supervision and transfer permanent custody to that  
3 parent, as provided for by paragraph (1) of subdivision (b) of  
4 Section 361.2.

5 (7) In all other cases, the court shall direct that any reunification  
6 services previously ordered shall continue to be offered to the  
7 parent or legal guardian pursuant to the time periods set forth in  
8 subdivision (a) of Section 361.5, provided that the court may  
9 modify the terms and conditions of those services.

10 (8) If the child is not returned to his or her parent or legal  
11 guardian, the court shall determine whether reasonable services  
12 that were designed to aid the parent or legal guardian in  
13 overcoming the problems that led to the initial removal and the  
14 continued custody of the child have been provided or offered to  
15 the parent or legal guardian. The court shall order that those  
16 services be initiated, continued, or terminated.

17 (f) (1) The permanency hearing shall be held no later than 12  
18 months after the date the child entered foster care, as that date is  
19 determined pursuant to Section 361.49. At the permanency hearing,  
20 the court shall determine the permanent plan for the child, which  
21 shall include a determination of whether the child will be returned  
22 to the child's home and, if so, when, within the time limits of  
23 subdivision (a) of Section 361.5. After considering the relevant  
24 and admissible evidence, the court shall order the return of the  
25 child to the physical custody of his or her parent or legal guardian  
26 unless the court finds, by a preponderance of the evidence, that  
27 the return of the child to his or her parent or legal guardian would  
28 create a substantial risk of detriment to the safety, protection, or  
29 physical or emotional well-being of the child. The social worker  
30 shall have the burden of establishing that detriment.

31 (A) At the permanency hearing, the court shall consider the  
32 criminal history, obtained pursuant to paragraph (1) of subdivision  
33 (f) of Section 16504.5, of the parent or legal guardian subsequent  
34 to the child's removal to the extent that the criminal record is  
35 substantially related to the welfare of the child or the parent's or  
36 legal guardian's ability to exercise custody and control regarding  
37 his or her child, provided that the parent or legal guardian agreed  
38 to submit fingerprint images to obtain criminal history information  
39 as part of the case plan. The court shall also determine whether  
40 reasonable services that were designed to aid the parent or legal



1 guardian to overcome the problems that led to the initial removal  
2 and continued custody of the child have been provided or offered  
3 to the parent or legal guardian.

4 (B) The court shall also consider whether the child can be  
5 returned to the custody of his or her parent who is enrolled in a  
6 certified substance abuse treatment facility that allows a dependent  
7 child to reside with his or her parent. The fact that the parent is  
8 enrolled in a certified substance abuse treatment facility shall not  
9 be, for that reason alone, *prima facie* evidence of detriment. The  
10 failure of the parent or legal guardian to participate regularly and  
11 make substantive progress in court-ordered treatment programs  
12 shall be *prima facie* evidence that return would be detrimental.

13 (C) In making its determination, the court shall review and  
14 consider the social worker's report and recommendations and the  
15 report and recommendations of any child advocate appointed  
16 pursuant to Section 356.5, shall consider the efforts or progress,  
17 or both, demonstrated by the parent or legal guardian and the extent  
18 to which he or she availed himself or herself of services provided,  
19 taking into account the particular barriers to a minor parent or a  
20 nonminor dependent parent, or an incarcerated, institutionalized,  
21 detained, or deported parent's or legal guardian's access to those  
22 court-mandated services and ability to maintain contact with his  
23 or her child, and shall make appropriate findings pursuant to  
24 subdivision (a) of Section 366.

25 (D) For each youth 16 years of age and older, the court shall  
26 also determine whether services have been made available to assist  
27 him or her in making the transition from foster care to successful  
28 adulthood.

29 (2) Regardless of whether the child is returned to his or her  
30 parent or legal guardian, the court shall specify the factual basis  
31 for its decision. If the child is not returned to a parent or legal  
32 guardian, the court shall specify *in writing* the factual basis for its  
33 conclusion that the return would be detrimental. The court also  
34 shall make a finding pursuant to subdivision (a) of Section 366. If  
35 the child is not returned to his or her parent or legal guardian, the  
36 court shall consider, and state for the record, in-state and  
37 out-of-state placement options. If the child is placed out of the  
38 state, the court shall make a determination whether the out-of-state  
39 placement continues to be appropriate and in the best interests of  
40 the child.

(g) If the time period in which the court-ordered services were provided has met or exceeded the time period set forth in subparagraph (A), (B), or (C) of paragraph (1) of subdivision (a) of Section 361.5, as appropriate, and a child is not returned to the custody of a parent or legal guardian at the permanency hearing held pursuant to subdivision (f), the court shall do one of the following:

(1) Continue the case for up to six months for a permanency review hearing, provided that the hearing shall occur within 18 months of the date the child was originally taken from the physical custody of his or her parent or legal guardian. The court shall continue the case only if it finds that there is a substantial probability that the child will be returned to the physical custody of his or her parent or legal guardian and safely maintained in the home within the extended period of time or that reasonable services have not been provided to the parent or legal guardian. For the purposes of this section, in order to find a substantial probability that the child will be returned to the physical custody of his or her parent or legal guardian and safely maintained in the home within the extended period of time, the court shall be required to find all of the following:

(A) That the parent or legal guardian has consistently and regularly contacted and visited with the child.

(B) That the parent or legal guardian has made significant progress in resolving problems that led to the child's removal from the home.

(C) The parent or legal guardian has demonstrated the capacity and ability both to complete the objectives of his or her treatment plan and to provide for the child's safety, protection, physical and emotional well-being, and special needs.

~~For~~

(i) For purposes of this subdivision, the court's decision to continue the case based on a finding or substantial probability that the child will be returned to the physical custody of his or her parent or legal guardian is a compelling reason for determining that a hearing held pursuant to Section 366.26 is not in the best interests of the child.

(ii) The court shall inform the parent or legal guardian that if the child cannot be returned home by the next permanency review hearing, a proceeding pursuant to Section 366.26 may be instituted.

1 The court shall not order that a hearing pursuant to Section 366.26  
2 be held unless there is clear and convincing evidence that  
3 reasonable services have been provided or offered to the parent or  
4 legal guardian.

5 (2) Continue the case for up to six months for a permanency  
6 review hearing, provided that the hearing shall occur within 18  
7 months of the date the child was originally taken from the physical  
8 custody of his or her parent or legal guardian, if the parent has  
9 been arrested and issued an immigration hold, detained by the  
10 United States Department of Homeland Security, or deported to  
11 his or her country of origin, and the court determines either that  
12 there is a substantial probability that the child will be returned to  
13 the physical custody of his or her parent or legal guardian and  
14 safely maintained in the home within the extended period of time  
15 or that reasonable services have not been provided to the parent  
16 or legal guardian.

17 (3) For purposes of paragraph (2), in order to find a substantial  
18 probability that the child will be returned to the physical custody  
19 of his or her parent or legal guardian and safely maintained in the  
20 home within the extended period of time, the court shall find all  
21 of the following:

22 (A) The parent or legal guardian has consistently and regularly  
23 contacted and visited with the child, taking into account any  
24 particular barriers to a parent's ability to maintain contact with his  
25 or her child due to the parent's arrest and receipt of an immigration  
26 hold, detention by the United States Department of Homeland  
27 Security, or deportation.

28 (B) The parent or legal guardian has made significant progress  
29 in resolving the problems that led to the child's removal from the  
30 home.

31 (C) The parent or legal guardian has demonstrated the capacity  
32 or ability both to complete the objectives of his or her treatment  
33 plan and to provide for the child's safety, protection, physical and  
34 emotional well-being, and special needs.

35 (4) Order that a hearing be held within 120 days, pursuant to  
36 Section 366.26, but only if the court does not continue the case to  
37 the permanency planning review hearing and there is clear and  
38 convincing evidence that reasonable services have been provided  
39 or offered to the parents or legal guardians. On and after January  
40 1, 2012, a hearing pursuant to Section 366.26 shall not be ordered

1 if the child is a nonminor dependent, unless the nonminor  
2 dependent is an Indian child and tribal customary adoption is  
3 recommended as the permanent plan.

4 (5) Order that the child remain in foster care, but only if the  
5 court finds by clear and convincing evidence, based upon the  
6 evidence already presented to it, including a recommendation by  
7 the State Department of Social Services when it is acting as an  
8 adoption agency or by a county adoption agency, that there is a  
9 compelling reason for determining that a hearing held pursuant to  
10 Section 366.26 is not in the best interests of the child because the  
11 child is not a proper subject for adoption and has no one willing  
12 to accept legal guardianship as of the hearing date. For purposes  
13 of this section, a recommendation by the State Department of  
14 Social Services when it is acting as an adoption agency or by a  
15 county adoption agency that adoption is not in the best interests  
16 of the child shall constitute a compelling reason for the court's  
17 determination. That recommendation shall be based on the present  
18 circumstances of the child and shall not preclude a different  
19 recommendation at a later date if the child's circumstances change.  
20 On and after January 1, 2012, the nonminor dependent's legal  
21 status as an adult is in and of itself a compelling reason not to hold  
22 a hearing pursuant to Section 366.26. The court may order that a  
23 nonminor dependent who otherwise is eligible pursuant to Section  
24 11403 remain in a planned, permanent living arrangement.

25 (A) The court shall make factual findings identifying any  
26 barriers to achieving the permanent plan as of the hearing date.  
27 When the child is under 16 years of age, the court shall order a  
28 permanent plan of return home, adoption, tribal customary adoption  
29 in the case of an Indian child, legal guardianship, or placement  
30 with a fit and willing relative, as appropriate. When the child is  
31 16 years of age or older, or is a nonminor dependent, and no other  
32 permanent plan is appropriate at the time of the hearing, the court  
33 may order another planned permanent living arrangement, as  
34 described in paragraph (2) of subdivision (i) of Section 16501.

35 (B) If the court orders that a child who is 10 years of age or  
36 older remain in foster care, the court shall determine whether the  
37 agency has made reasonable efforts to maintain the child's  
38 relationships with individuals other than the child's siblings who  
39 are important to the child, consistent with the child's best interests,

1 and may make any appropriate order to ensure that those  
2 relationships are maintained.

3 (C) If the child is not returned to his or her parent or legal  
4 guardian, the court shall consider, and state for the record, in-state  
5 and out-of-state options for permanent placement. If the child is  
6 placed out of the state, the court shall make a determination  
7 whether the out-of-state placement continues to be appropriate and  
8 in the best interests of the child.

9 (h) In any case in which the court orders that a hearing pursuant  
10 to Section 366.26 shall be held, it shall also order the termination  
11 of reunification services to the parent or legal guardian. The court  
12 shall continue to permit the parent or legal guardian to visit the  
13 child pending the hearing unless it finds that visitation would be  
14 detrimental to the child. The court shall make any other appropriate  
15 orders to enable the child to maintain relationships with individuals,  
16 other than the child's siblings, who are important to the child,  
17 consistent with the child's best interests. When the court orders a  
18 termination of reunification services to the parent or legal guardian,  
19 it shall also order that the child's caregiver receive the child's birth  
20 certificate in accordance with Sections 16010.4 and 16010.5.  
21 Additionally, when the court orders a termination of reunification  
22 services to the parent or legal guardian, it shall order, when  
23 appropriate, that a child who is 16 years of age or older receive  
24 his or her birth certificate.

25 (i) (1) Whenever a court orders that a hearing pursuant to  
26 Section 366.26, including, when, in consultation with the child's  
27 tribe, tribal customary adoption is recommended, shall be held, it  
28 shall direct the agency supervising the child and the county  
29 adoption agency, or the State Department of Social Services when  
30 it is acting as an adoption agency, to prepare an assessment that  
31 shall include:

32 (A) Current search efforts for an absent parent or parents or  
33 legal guardians.

34 (B) A review of the amount of and nature of any contact between  
35 the child and his or her parents or legal guardians and other  
36 members of his or her extended family since the time of placement.  
37 Although the extended family of each child shall be reviewed on  
38 a case-by-case basis, "extended family" for the purpose of this  
39 subparagraph shall include, but not be limited to, the child's  
40 siblings, grandparents, aunts, and uncles.

1 (C) An evaluation of the child's medical, developmental,  
2 scholastic, mental, and emotional status.

3 (D) A preliminary assessment of the eligibility and commitment  
4 of any identified prospective adoptive parent or legal guardian,  
5 including the prospective tribal customary adoptive parent,  
6 particularly the caretaker, to include a social history including  
7 screening for criminal records and prior referrals for child abuse  
8 or neglect, the capability to meet the child's needs, and the  
9 understanding of the legal and financial rights and responsibilities  
10 of adoption and guardianship. If a proposed guardian is a relative  
11 of the minor, the assessment shall also consider, but need not be  
12 limited to, all of the factors specified in subdivision (a) of Section  
13 361.3 and in Section 361.4.

14 (E) The relationship of the child to any identified prospective  
15 adoptive parent or legal guardian, the duration and character of  
16 the relationship, the degree of attachment of the child to the  
17 prospective relative guardian or adoptive parent, the relative's or  
18 adoptive parent's strong commitment to caring permanently for  
19 the child, the motivation for seeking adoption or guardianship, a  
20 statement from the child concerning placement and the adoption  
21 or guardianship, and whether the child, if over 12 years of age,  
22 has been consulted about the proposed relative guardianship  
23 arrangements, unless the child's age or physical, emotional, or  
24 other condition precludes his or her meaningful response, and if  
25 so, a description of the condition.

26 (F) A description of efforts to be made to identify a prospective  
27 adoptive parent or legal guardian, including, but not limited to,  
28 child-specific recruitment and listing on an adoption exchange  
29 within the state or out of the state.

30 (G) An analysis of the likelihood that the child will be adopted  
31 if parental rights are terminated.

32 (H) In the case of an Indian child, in addition to subparagraphs  
33 (A) to (G), inclusive, an assessment of the likelihood that the child  
34 will be adopted, when, in consultation with the child's tribe, a  
35 tribal customary adoption, as defined in Section 366.24, is  
36 recommended. If tribal customary adoption is recommended, the  
37 assessment shall include an analysis of both of the following:

38 (i) Whether tribal customary adoption would or would not be  
39 detrimental to the Indian child and the reasons for reaching that  
40 conclusion.

1 (ii) Whether the Indian child cannot or should not be returned  
2 to the home of the Indian parent or Indian custodian and the reasons  
3 for reaching that conclusion.

4 (2) (A) A relative caregiver's preference for legal guardianship  
5 over adoption, if it is due to circumstances that do not include an  
6 unwillingness to accept legal or financial responsibility for the  
7 child, shall not constitute the sole basis for recommending removal  
8 of the child from the relative caregiver for purposes of adoptive  
9 placement.

10 (B) Regardless of his or her immigration status, a relative  
11 caregiver shall be given information regarding the permanency  
12 options of guardianship and adoption, including the long-term  
13 benefits and consequences of each option, prior to establishing  
14 legal guardianship or pursuing adoption. If the proposed permanent  
15 plan is guardianship with an approved relative caregiver for a  
16 minor eligible for aid under the Kin-GAP Program, as provided  
17 for in Article 4.7 (commencing with Section 11385) of Chapter 2  
18 of Part 3 of Division 9, the relative caregiver shall be informed  
19 about the terms and conditions of the negotiated agreement  
20 pursuant to Section 11387 and shall agree to its execution prior to  
21 the hearing held pursuant to Section 366.26. A copy of the executed  
22 negotiated agreement shall be attached to the assessment.

23 (j) If, at any hearing held pursuant to Section 366.26, a  
24 guardianship is established for the minor with an approved relative  
25 caregiver, and juvenile court dependency is subsequently  
26 dismissed, the minor shall be eligible for aid under the Kin-GAP  
27 Program, as provided for in Article 4.5 (commencing with Section  
28 11360) or Article 4.7 (commencing with Section 11385), as  
29 applicable, of Chapter 2 of Part 3 of Division 9.

30 (k) As used in this section, "relative" means an adult who is  
31 related to the minor by blood, adoption, or affinity within the fifth  
32 degree of kinship, including stepparents, stepsiblings, and all  
33 relatives whose status is preceded by the words "great,"  
34 "great-great," or "grand," or the spouse of any of those persons  
35 even if the marriage was terminated by death or dissolution. If the  
36 proposed permanent plan is guardianship with an approved relative  
37 caregiver for a minor eligible for aid under the Kin-GAP Program,  
38 as provided for in Article 4.7 (commencing with Section 11385)  
39 of Chapter 2 of Part 3 of Division 9, "relative" as used in this

1 section has the same meaning as “relative” as defined in  
2 subdivision (c) of Section 11391.

3 (l) For purposes of this section, evidence of any of the following  
4 circumstances shall not, in and of itself, be deemed a failure to  
5 provide or offer reasonable services:

6 (1) The child has been placed with a foster family that is eligible  
7 to adopt a child, or has been placed in a preadoptive home.

8 (2) The case plan includes services to make and finalize a  
9 permanent placement for the child if efforts to reunify fail.

10 (3) Services to make and finalize a permanent placement for  
11 the child, if efforts to reunify fail, are provided concurrently with  
12 services to reunify the family.

13 *SEC. 2. Section 366.22 of the Welfare and Institutions Code*  
14 *is amended to read:*

15 366.22. (a) (1) ~~When~~*If* a case has been continued pursuant  
16 to paragraph (1) or (2) of subdivision (g) of Section 366.21, the  
17 permanency review hearing shall occur within 18 months after the  
18 date the child was originally removed from the physical custody  
19 of his or her parent or legal guardian. After considering the  
20 admissible and relevant evidence, the court shall order the return  
21 of the child to the physical custody of his or her parent or legal  
22 guardian unless the court finds, by a preponderance of the evidence,  
23 that the return of the child to his or her parent or legal guardian  
24 would create a substantial risk of detriment to the safety, protection,  
25 or physical or emotional well-being of the child. The social worker  
26 shall have the burden of establishing that detriment. At the  
27 permanency review hearing, the court shall consider the criminal  
28 history, obtained pursuant to paragraph (1) of subdivision (f) of  
29 Section 16504.5, of the parent or legal guardian subsequent to the  
30 child’s removal, to the extent that the criminal record is  
31 substantially related to the welfare of the child or the parent’s or  
32 legal guardian’s ability to exercise custody and control regarding  
33 his or her child, provided that the parent or legal guardian agreed  
34 to submit fingerprint images to obtain criminal history information  
35 as part of the case plan. The court shall also consider whether the  
36 child can be returned to the custody of his or her parent who is  
37 enrolled in a certified substance abuse treatment facility that allows  
38 a dependent child to reside with his or her parent. The fact that the  
39 parent is enrolled in a certified substance abuse treatment facility  
40 shall not be, for that reason alone, prima facie evidence of



1 detriment. The failure of the parent or legal guardian to participate  
2 regularly and make substantive progress in court-ordered treatment  
3 programs shall be prima facie evidence that return would be  
4 detrimental. In making its determination, the court shall review  
5 and consider the social worker's report and recommendations and  
6 the report and recommendations of any child advocate appointed  
7 pursuant to Section 356.5; shall consider the efforts or progress,  
8 or both, demonstrated by the parent or legal guardian and the extent  
9 to which he or she availed himself or herself of services provided,  
10 taking into account the particular barriers of a minor parent or a  
11 nonminor dependent parent, or an incarcerated or institutionalized  
12 parent's or legal guardian's access to those court-mandated services  
13 and ability to maintain contact with his or her child; and shall make  
14 appropriate findings pursuant to subdivision (a) of Section 366.

15 (2) Whether or not the child is returned to his or her parent or  
16 legal guardian, the court shall specify *in writing* the factual basis  
17 for its decision. If the child is not returned to a parent or legal  
18 guardian, the court shall specify the factual basis for its conclusion  
19 that return would be detrimental. If the child is not returned to his  
20 or her parent or legal guardian, the court shall consider, and state  
21 for the record, in-state and out-of-state options for the child's  
22 permanent placement. If the child is placed out of the state, the  
23 court shall make a determination whether the out-of-state placement  
24 continues to be appropriate and in the best interests of the child.

25 (3) Unless the conditions in subdivision (b) are met and the  
26 child is not returned to a parent or legal guardian at the permanency  
27 review hearing, the court shall order that a hearing be held pursuant  
28 to Section 366.26 in order to determine whether adoption, or, in  
29 the case of an Indian child, in consultation with the child's tribe,  
30 tribal customary adoption, guardianship, or continued placement  
31 in foster care is the most appropriate plan for the child. On and  
32 after January 1, 2012, a hearing pursuant to Section 366.26 shall  
33 not be ordered if the child is a nonminor dependent, unless the  
34 nonminor dependent is an Indian child, and tribal customary  
35 adoption is recommended as the permanent plan. However, if the  
36 court finds by clear and convincing evidence, based on the evidence  
37 already presented to it, including a recommendation by the State  
38 Department of Social Services when it is acting as an adoption  
39 agency or by a county adoption agency, that there is a compelling  
40 reason, as described in paragraph (5) of subdivision (g) of Section

1 366.21, for determining that a hearing held under Section 366.26  
2 is not in the best interests of the child because the child is not a  
3 proper subject for adoption and has no one willing to accept legal  
4 guardianship as of the hearing date, the court may, only under  
5 these circumstances, order that the child remain in foster care with  
6 a permanent plan of return home, adoption, tribal customary  
7 adoption in the case of an Indian child, legal guardianship, or  
8 placement with a fit and willing relative, as appropriate. If the  
9 child is 16 years of age or older or is a nonminor dependent, and  
10 no other permanent plan is appropriate at the time of the hearing,  
11 the court may order another planned permanent living arrangement,  
12 as described in paragraph (2) of subdivision (i) of Section 16501.  
13 The court shall make factual findings identifying any barriers to  
14 achieving the permanent plan as of the hearing date. On and after  
15 January 1, 2012, the nonminor dependent's legal status as an adult  
16 is in and of itself a compelling reason not to hold a hearing pursuant  
17 to Section 366.26. The court may order that a nonminor dependent  
18 who otherwise is eligible pursuant to Section 11403 remain in a  
19 planned, permanent living arrangement. If the court orders that a  
20 child who is 10 years of age or older remain in foster care, the  
21 court shall determine whether the agency has made reasonable  
22 efforts to maintain the child's relationships with individuals other  
23 than the child's siblings who are important to the child, consistent  
24 with the child's best interests, and may make any appropriate order  
25 to ensure that those relationships are maintained. The hearing shall  
26 be held no later than 120 days from the date of the permanency  
27 review hearing. The court shall also order termination of  
28 reunification services to the parent or legal guardian. The court  
29 shall continue to permit the parent or legal guardian to visit the  
30 child unless it finds that visitation would be detrimental to the  
31 child. The court shall determine whether reasonable services have  
32 been offered or provided to the parent or legal guardian. For  
33 purposes of this subdivision, evidence of any of the following  
34 circumstances shall not, in and of themselves, be deemed a failure  
35 to provide or offer reasonable services:

36 (A) The child has been placed with a foster family that is eligible  
37 to adopt a child, or has been placed in a preadoptive home.

38 (B) The case plan includes services to make and finalize a  
39 permanent placement for the child if efforts to reunify fail.

1 (C) Services to make and finalize a permanent placement for  
2 the child, if efforts to reunify fail, are provided concurrently with  
3 services to reunify the family.

4 (b) (1) If the child is not returned to a parent or legal guardian  
5 at the permanency review hearing and the court determines by  
6 clear and convincing evidence that the best interests of the child  
7 would be met by the provision of additional reunification services  
8 to a parent or legal guardian who is making significant and  
9 consistent progress in a court-ordered residential substance abuse  
10 treatment program, a parent who was either a minor parent or a  
11 nonminor dependent parent at the time of the initial hearing making  
12 significant and consistent progress in establishing a safe home for  
13 the child's return, or a parent recently discharged from  
14 incarceration, institutionalization, or the custody of the United  
15 States Department of Homeland Security and making significant  
16 and consistent progress in establishing a safe home for the child's  
17 return, the court may continue the case for up to six months for a  
18 subsequent permanency review hearing, provided that the hearing  
19 shall occur within 24 months of the date the child was originally  
20 taken from the physical custody of his or her parent or legal  
21 guardian. The court shall continue the case only if it finds that  
22 there is a substantial probability that the child will be returned to  
23 the physical custody of his or her parent or legal guardian and  
24 safely maintained in the home within the extended period of time  
25 or that reasonable services have not been provided to the parent  
26 or legal guardian. For the purposes of this section, in order to find  
27 a substantial probability that the child will be returned to the  
28 physical custody of his or her parent or legal guardian and safely  
29 maintained in the home within the extended period of time, the  
30 court shall be required to find all of the following:

31 (1)  
32 (A) That the parent or legal guardian has consistently and  
33 regularly contacted and visited with the child.

34 (2)  
35 (B) That the parent or legal guardian has made significant and  
36 consistent progress in the prior 18 months in resolving problems  
37 that led to the child's removal from the home.

38 (3)  
39 (C) The parent or legal guardian has demonstrated the capacity  
40 and ability both to complete the objectives of his or her substance

1 abuse treatment plan as evidenced by reports from a substance  
2 abuse provider as applicable, or complete a treatment plan  
3 postdischarge from incarceration, institutionalization, or detention,  
4 or following deportation to his or her country of origin and his or  
5 her return to the United States, and to provide for the child's safety,  
6 protection, physical and emotional well-being, and special needs.

7 ~~For~~

8 (2) *For* purposes of this subdivision, the court's decision to  
9 continue the case based on a finding or substantial probability that  
10 the child will be returned to the physical custody of his or her  
11 parent or legal guardian is a compelling reason for determining  
12 that a hearing held pursuant to Section 366.26 is not in the best  
13 interests of the child.

14 ~~The~~

15 (3) *The* court shall inform the parent or legal guardian that if  
16 the child cannot be returned home by the subsequent permanency  
17 review hearing, a proceeding pursuant to Section 366.26 may be  
18 instituted. The court shall not order that a hearing pursuant to  
19 Section 366.26 be held unless there is clear and convincing  
20 evidence that reasonable services have been provided or offered  
21 to the parent or legal guardian.

22 (c) (1) Whenever a court orders that a hearing pursuant to  
23 Section 366.26, including when a tribal customary adoption is  
24 recommended, shall be held, it shall direct the agency supervising  
25 the child and the county adoption agency, or the State Department  
26 of Social Services when it is acting as an adoption agency, to  
27 prepare an assessment that shall include:

28 (A) Current search efforts for an absent parent or parents.

29 (B) A review of the amount of and nature of any contact between  
30 the child and his or her parents and other members of his or her  
31 extended family since the time of placement. Although the  
32 extended family of each child shall be reviewed on a case-by-case  
33 basis, "extended family" for the purposes of this subparagraph  
34 shall include, but not be limited to, the child's siblings,  
35 grandparents, aunts, and uncles.

36 (C) An evaluation of the child's medical, developmental,  
37 scholastic, mental, and emotional status.

38 (D) A preliminary assessment of the eligibility and commitment  
39 of any identified prospective adoptive parent or legal guardian,  
40 particularly the caretaker, to include a social history including

1 screening for criminal records and prior referrals for child abuse  
2 or neglect, the capability to meet the child's needs, and the  
3 understanding of the legal and financial rights and responsibilities  
4 of adoption and guardianship. If a proposed legal guardian is a  
5 relative of the minor, the assessment shall also consider, but need  
6 not be limited to, all of the factors specified in subdivision (a) of  
7 Section 361.3 and Section 361.4.

8 (E) The relationship of the child to any identified prospective  
9 adoptive parent or legal guardian, the duration and character of  
10 the relationship, the degree of attachment of the child to the  
11 prospective relative guardian or adoptive parent, the relative's or  
12 adoptive parent's strong commitment to caring permanently for  
13 the child, the motivation for seeking adoption or legal guardianship,  
14 a statement from the child concerning placement and the adoption  
15 or legal guardianship, and whether the child, if over 12 years of  
16 age, has been consulted about the proposed relative guardianship  
17 arrangements, unless the child's age or physical, emotional, or  
18 other condition precludes his or her meaningful response, and if  
19 so, a description of the condition.

20 (F) An analysis of the likelihood that the child will be adopted  
21 if parental rights are terminated.

22 (G) In the case of an Indian child, in addition to subparagraphs  
23 (A) to (F), inclusive, an assessment of the likelihood that the child  
24 will be adopted, when, in consultation with the child's tribe, a  
25 tribal customary adoption, as defined in Section 366.24, is  
26 recommended. If tribal customary adoption is recommended, the  
27 assessment shall include an analysis of both of the following:

28 (i) Whether tribal customary adoption would or would not be  
29 detrimental to the Indian child and the reasons for reaching that  
30 conclusion.

31 (ii) Whether the Indian child cannot or should not be returned  
32 to the home of the Indian parent or Indian custodian and the reasons  
33 for reaching that conclusion.

34 (2) (A) A relative caregiver's preference for legal guardianship  
35 over adoption, if it is due to circumstances that do not include an  
36 unwillingness to accept legal or financial responsibility for the  
37 child, shall not constitute the sole basis for recommending removal  
38 of the child from the relative caregiver for purposes of adoptive  
39 placement.

(B) Regardless of his or her immigration status, a relative caregiver shall be given information regarding the permanency options of guardianship and adoption, including the long-term benefits and consequences of each option, prior to establishing legal guardianship or pursuing adoption. If the proposed permanent plan is guardianship with an approved relative caregiver for a minor eligible for aid under the Kin-GAP Program, as provided for in Article 4.7 (commencing with Section 11385) of Chapter 2 of Part 3 of Division 9, the relative caregiver shall be informed about the terms and conditions of the negotiated agreement pursuant to Section 11387 and shall agree to its execution prior to the hearing held pursuant to Section 366.26. A copy of the executed negotiated agreement shall be attached to the assessment.

~~(d) This section shall become operative January 1, 1999.~~ If at any hearing held pursuant to Section 366.26, a legal guardianship is established for the minor with an approved relative caregiver, and juvenile court dependency is subsequently dismissed, the minor shall be eligible for aid under the Kin-GAP Program, as provided for in Article 4.5 (commencing with Section 11360) or Article 4.7 (commencing with Section 11385), as applicable, of Chapter 2 of Part 3 of Division 9.

(e) As used in this section, “relative” means an adult who is related to the child by blood, adoption, or affinity within the fifth degree of kinship, including stepparents, stepsiblings, and all relatives whose status is preceded by the words “great,” “great-great,” or “grand,” or the spouse of any of those persons even if the marriage was terminated by death or dissolution. If the proposed permanent plan is guardianship with an approved relative caregiver for a minor eligible for aid under the Kin-GAP Program, as provided for in Article 4.7 (commencing with Section 11385) of Chapter 2 of Part 3 of Division 9, “relative” as used in this section has the same meaning as “relative” as defined in subdivision (c) of Section 11391.

*SEC. 3. Section 366.25 of the Welfare and Institutions Code is amended to read:*

366.25. (a) (1) ~~When~~ If a case has been continued pursuant to subdivision (b) of Section 366.22, the subsequent permanency review hearing shall occur within 24 months after the date the child was originally removed from the physical custody of his or her parent or legal guardian. After considering the relevant and

1 admissible evidence, the court shall order the return of the child  
2 to the physical custody of his or her parent or legal guardian unless  
3 the court finds, by a preponderance of the evidence, that the return  
4 of the child to his or her parent or legal guardian would create a  
5 substantial risk of detriment to the safety, protection, or physical  
6 or emotional well-being of the child. The social worker shall have  
7 the burden of establishing that detriment. At the subsequent  
8 permanency review hearing, the court shall consider the criminal  
9 history, obtained pursuant to paragraph (1) of subdivision (f) of  
10 Section 16504.5, of the parent or legal guardian subsequent to the  
11 child's removal to the extent that the criminal record is substantially  
12 related to the welfare of the child or parent's or legal guardian's  
13 ability to exercise custody and control regarding his or her child  
14 provided that the parent or legal guardian agreed to submit  
15 fingerprint images to obtain criminal history information as part  
16 of the case plan. The court shall also consider whether the child  
17 can be returned to the custody of a parent who is enrolled in a  
18 certified substance abuse treatment facility that allows a dependent  
19 child to reside with his or her parent. The fact that the parent is  
20 enrolled in a certified substance abuse treatment facility shall not  
21 be, for that reason alone, *prima facie* evidence of detriment. The  
22 failure of the parent or legal guardian to participate regularly and  
23 make substantive progress in court-ordered treatment programs  
24 shall be *prima facie* evidence that return would be detrimental. In  
25 making its determination, the court shall review and consider the  
26 social worker's report and recommendations and the report and  
27 recommendations of any child advocate appointed pursuant to  
28 Section 356.5; shall consider the efforts or progress, or both,  
29 demonstrated by the parent or legal guardian and the extent to  
30 which he or she availed himself or herself of services provided;  
31 and shall make appropriate findings pursuant to subdivision (a) of  
32 Section 366.

33 (2) Whether or not the child is returned to his or her parent or  
34 legal guardian, the court shall specify *in writing* the factual basis  
35 for its decision. If the child is not returned to a parent or legal  
36 guardian, the court shall specify the factual basis for its conclusion  
37 that return would be detrimental. If the child is not returned to his  
38 or her parent or legal guardian, the court shall consider and state  
39 for the record, in-state and out-of-state options for the child's  
40 permanent placement. If the child is placed out of the state, the

1 court shall make a determination whether the out-of-state placement  
2 continues to be appropriate and in the best interests of the child.

3 (3) If the child is not returned to a parent or legal guardian at  
4 the subsequent permanency review hearing, the court shall order  
5 that a hearing be held pursuant to Section 366.26 in order to  
6 determine whether adoption, or, in the case of an Indian child,  
7 tribal customary adoption, guardianship, or, in the case of a child  
8 16 years of age or older when no other permanent plan is  
9 appropriate, another planned permanent living arrangement is the  
10 most appropriate plan for the child. On and after January 1, 2012,  
11 a hearing pursuant to Section 366.26 shall not be ordered if the  
12 child is a nonminor dependent, unless the nonminor dependent is  
13 an Indian child and tribal customary adoption is recommended as  
14 the permanent plan. However, if the court finds by clear and  
15 convincing evidence, based on the evidence already presented to  
16 it, including a recommendation by the State Department of Social  
17 Services when it is acting as an adoption agency or by a county  
18 adoption agency, that there is a compelling reason, as described  
19 in paragraph (5) of subdivision (g) of Section 366.21, for  
20 determining that a hearing held under Section 366.26 is not in the  
21 best interest of the child because the child is not a proper subject  
22 for adoption or, in the case of an Indian child, tribal customary  
23 adoption, and has no one willing to accept legal guardianship as  
24 of the hearing date, then the court may, only under these  
25 circumstances, order that the child remain in foster care with a  
26 permanent plan of return home, adoption, tribal customary adoption  
27 in the case of an Indian child, legal guardianship, or placement  
28 with a fit and willing relative, as appropriate. If the child is 16  
29 years of age or older or is a nonminor dependent, and no other  
30 permanent plan is appropriate at the time of the hearing, the court  
31 may order another planned permanent living arrangement, as  
32 described in paragraph (2) of subdivision (i) of Section 16501.  
33 The court shall make factual findings identifying any barriers to  
34 achieving the permanent plan as of the hearing date. On and after  
35 January 1, 2012, the nonminor dependent's legal status as an adult  
36 is in and of itself a compelling reason not to hold a hearing pursuant  
37 to Section 366.26. The court may order that a nonminor dependent  
38 who otherwise is eligible pursuant to Section 11403 remain in a  
39 planned, permanent living arrangement. If the court orders that a  
40 child who is 10 years of age or older remain in foster care, the



1 court shall determine whether the agency has made reasonable  
2 efforts to maintain the child's relationships with individuals other  
3 than the child's siblings who are important to the child, consistent  
4 with the child's best interests, and may make any appropriate order  
5 to ensure that those relationships are maintained. The hearing shall  
6 be held no later than 120 days from the date of the subsequent  
7 permanency review hearing. The court shall also order termination  
8 of reunification services to the parent or legal guardian. The court  
9 shall continue to permit the parent or legal guardian to visit the  
10 child unless it finds that visitation would be detrimental to the  
11 child. The court shall determine whether reasonable services have  
12 been offered or provided to the parent or legal guardian. For  
13 purposes of this paragraph, evidence of any of the following  
14 circumstances shall not, in and of themselves, be deemed a failure  
15 to provide or offer reasonable services:

16 (A) The child has been placed with a foster family that is eligible  
17 to adopt a child, or has been placed in a preadoptive home.

18 (B) The case plan includes services to make and finalize a  
19 permanent placement for the child if efforts to reunify fail.

20 (C) Services to make and finalize a permanent placement for  
21 the child, if efforts to reunify fail, are provided concurrently with  
22 services to reunify the family.

23 (b) (1) Whenever a court orders that a hearing pursuant to  
24 Section 366.26 shall be held, it shall direct the agency supervising  
25 the child and the county adoption agency, or the State Department  
26 of Social Services when it is acting as an adoption agency, to  
27 prepare an assessment that shall include:

28 (A) Current search efforts for an absent parent or parents.

29 (B) A review of the amount of, and nature of, any contact  
30 between the child and his or her parents and other members of his  
31 or her extended family since the time of placement. Although the  
32 extended family of each child shall be reviewed on a case-by-case  
33 basis, "extended family" for the purposes of this paragraph shall  
34 include, but not be limited to, the child's siblings, grandparents,  
35 aunts, and uncles.

36 (C) An evaluation of the child's medical, developmental,  
37 scholastic, mental, and emotional status.

38 (D) A preliminary assessment of the eligibility and commitment  
39 of any identified prospective adoptive parent or legal guardian,  
40 including a prospective tribal customary adoptive parent,

1 particularly the caretaker, to include a social history including  
2 screening for criminal records and prior referrals for child abuse  
3 or neglect, the capability to meet the child's needs, and the  
4 understanding of the legal and financial rights and responsibilities  
5 of adoption and guardianship. If a proposed legal guardian is a  
6 relative of the minor, the assessment shall also consider, but need  
7 not be limited to, all of the factors specified in subdivision (a) of  
8 Section 361.3 and in Section 361.4.

9 (E) The relationship of the child to any identified prospective  
10 adoptive parent or legal guardian, including a prospective tribal  
11 customary adoptive parent, the duration and character of the  
12 relationship, the degree of attachment of the child to the prospective  
13 relative guardian or adoptive parent, the relative's or adoptive  
14 parent's strong commitment to caring permanently for the child,  
15 the motivation for seeking adoption or legal guardianship, a  
16 statement from the child concerning placement and the adoption  
17 or legal guardianship, and whether the child, if over 12 years of  
18 age, has been consulted about the proposed relative guardianship  
19 arrangements, unless the child's age or physical, emotional, or  
20 other condition precludes his or her meaningful response, and if  
21 so, a description of the condition.

22 (F) An analysis of the likelihood that the child will be adopted  
23 if parental rights are terminated.

24 (G) In the case of an Indian child, in addition to subparagraphs  
25 (A) to (F), inclusive, an assessment of the likelihood that the child  
26 will be adopted, when, in consultation with the child's tribe, a  
27 tribal customary adoption, as defined in Section 366.24, is  
28 recommended. If tribal customary adoption is recommended, the  
29 assessment shall include an analysis of both of the following:

30 (i) Whether tribal customary adoption would or would not be  
31 detrimental to the Indian child and the reasons for reaching that  
32 conclusion.

33 (ii) Whether the Indian child cannot or should not be returned  
34 to the home of the Indian parent or Indian custodian and the reasons  
35 for reaching that conclusion.

36 (2) (A) A relative caregiver's preference for legal guardianship  
37 over adoption, if it is due to circumstances that do not include an  
38 unwillingness to accept legal or financial responsibility for the  
39 child, shall not constitute the sole basis for recommending removal

1 of the child from the relative caregiver for purposes of adoptive  
2 placement.

3 (B) Regardless of his or her immigration status, a relative  
4 caregiver shall be given information regarding the permanency  
5 options of guardianship and adoption, including the long-term  
6 benefits and consequences of each option, prior to establishing  
7 legal guardianship or pursuing adoption. If the proposed permanent  
8 plan is guardianship with an approved relative caregiver for a  
9 minor eligible for aid under the Kin-GAP Program, as provided  
10 for in Article 4.7 (commencing with Section 11385) of Chapter 2  
11 of Part 3 of Division 9, the relative caregiver shall be informed  
12 about the terms and conditions of the negotiated agreement  
13 pursuant to Section 11387 and shall agree to its execution prior to  
14 the hearing held pursuant to Section 366.26. A copy of the executed  
15 negotiated agreement shall be attached to the assessment.

16 (c) If, at any hearing held pursuant to Section 366.26, a  
17 guardianship is established for the minor with an approved relative  
18 caregiver, and juvenile court dependency is subsequently  
19 dismissed, the minor shall be eligible for aid under the Kin-GAP  
20 Program, as provided for in Article 4.5 (commencing with Section  
21 11360) or Article 4.7 (commencing with Section 11385), as  
22 applicable, of Chapter 2 of Part 3 of Division 9.

23 (d) As used in this section, “relative” means an adult who is  
24 related to the minor by blood, adoption, or affinity within the fifth  
25 degree of kinship, including stepparents, stepsiblings, and all  
26 relatives whose status is preceded by the words “great,”  
27 “great-great,” or “grand,” or the spouse of any of those persons  
28 even if the marriage was terminated by death or dissolution. If the  
29 proposed permanent plan is guardianship with an approved relative  
30 caregiver for a minor eligible for aid under the Kin-GAP Program,  
31 as provided in Article 4.7 (commencing with Section 11385) of  
32 Chapter 2 of Part 3 of Division 9, “relative” as used in this section  
33 has the same meaning as “relative” as defined in subdivision (c)  
34 of Section 11391.

35 *SEC. 4. Section 366.26 of the Welfare and Institutions Code*  
36 *is amended to read:*

37 366.26. (a) This section applies to children who are adjudged  
38 dependent children of the juvenile court pursuant to subdivision  
39 (d) of Section 360. The procedures specified herein are the  
40 exclusive procedures for conducting these hearings; Part 2

1 (commencing with Section 3020) of Division 8 of the Family Code  
2 is not applicable to these proceedings. Section 8616.5 of the Family  
3 Code is applicable and available to all dependent children meeting  
4 the requirements of that section, if the postadoption contact  
5 agreement has been entered into voluntarily. For children who are  
6 adjudged dependent children of the juvenile court pursuant to  
7 subdivision (d) of Section 360, this section and Sections 8604,  
8 8605, 8606, and 8700 of the Family Code and Chapter 5  
9 (commencing with Section 7660) of Part 3 of Division 12 of the  
10 Family Code specify the exclusive procedures for permanently  
11 terminating parental rights with regard to, or establishing legal  
12 guardianship of, the child while the child is a dependent child of  
13 the juvenile court.

14 (b) At the hearing, which shall be held in juvenile court for all  
15 children who are dependents of the juvenile court, the court, in  
16 order to provide stable, permanent homes for these children, shall  
17 review the report as specified in Section 361.5, 366.21, 366.22, or  
18 366.25, shall indicate that the court has read and considered it,  
19 shall receive other evidence that the parties may present, and then  
20 shall make findings and orders in the following order of preference:

21 (1) Terminate the rights of the parent or parents and order that  
22 the child be placed for adoption and, upon the filing of a petition  
23 for adoption in the juvenile court, order that a hearing be set. The  
24 court shall proceed with the adoption after the appellate rights of  
25 the natural parents have been exhausted.

26 (2) Order, without termination of parental rights, the plan of  
27 tribal customary adoption, as described in Section 366.24, through  
28 tribal custom, traditions, or law of the Indian child's tribe, and  
29 upon the court affording the tribal customary adoption order full  
30 faith and credit at the continued selection and implementation  
31 hearing, order that a hearing be set pursuant to paragraph (2) of  
32 subdivision (e).

33 (3) Appoint a relative or relatives with whom the child is  
34 currently residing as legal guardian or guardians for the child, and  
35 order that letters of guardianship issue.

36 (4) On making a finding under paragraph (3) of subdivision (c),  
37 identify adoption or tribal customary adoption as the permanent  
38 placement goal and order that efforts be made to locate an  
39 appropriate adoptive family for the child within a period not to  
40 exceed 180 days.

1 (5) Appoint a nonrelative legal guardian for the child and order  
2 that letters of guardianship issue.

3 (6) Order that the child be permanently placed with a fit and  
4 willing relative, subject to the periodic review of the juvenile court  
5 under Section 366.3.

6 (7) Order that the child remain in foster care, subject to the  
7 conditions described in paragraph (4) of subdivision (c) and the  
8 periodic review of the juvenile court under Section 366.3.

9 In choosing among the above alternatives the court shall proceed  
10 pursuant to subdivision (c).

11 (c) (1) If the court determines, based on the assessment provided  
12 as ordered under subdivision (i) of Section 366.21, subdivision (b)  
13 of Section 366.22, or subdivision (b) of Section 366.25, and any  
14 other relevant evidence, by a clear and convincing standard, that  
15 it is likely the child will be adopted, the court shall terminate  
16 parental rights and order the child placed for adoption. The fact  
17 that the child is not yet placed in a preadoptive home nor with a  
18 relative or foster family who is prepared to adopt the child, shall  
19 not constitute a basis for the court to conclude that it is not likely  
20 the child will be adopted. A finding under subdivision (b) or  
21 paragraph (1) of subdivision (e) of Section 361.5 that reunification  
22 services shall not be offered, under subdivision (e) of Section  
23 366.21 that the whereabouts of a parent have been unknown for  
24 six months or that the parent has failed to visit or contact the child  
25 for six months, or that the parent has been convicted of a felony  
26 indicating parental unfitness, or, under Section 366.21 or 366.22,  
27 that the court has continued to remove the child from the custody  
28 of the parent or guardian and has terminated reunification services,  
29 shall constitute a sufficient basis for termination of parental rights.  
30 Under these circumstances, the court shall terminate parental rights  
31 unless either of the following applies:

32 (A) The child is living with a relative who is unable or unwilling  
33 to adopt the child because of circumstances that do not include an  
34 unwillingness to accept legal or financial responsibility for the  
35 child, but who is willing and capable of providing the child with  
36 a stable and permanent environment through legal guardianship,  
37 and the removal of the child from the custody of his or her relative  
38 would be detrimental to the emotional well-being of the child. For  
39 purposes of an Indian child, “relative” shall include an “extended

1 family member,” as defined in the federal Indian Child Welfare  
2 Act of 1978 (25 U.S.C. Sec. 1903(2)).

3 (B) The court finds a compelling reason for determining that  
4 termination would be detrimental to the child due to one or more  
5 of the following circumstances:

6 (i) The parents have maintained regular visitation and contact  
7 with the child and the child would benefit from continuing the  
8 relationship.

9 (ii) A child 12 years of age or older objects to termination of  
10 parental rights.

11 (iii) The child is placed in a residential treatment facility,  
12 adoption is unlikely or undesirable, and continuation of parental  
13 rights will not prevent finding the child a permanent family  
14 placement if the parents cannot resume custody when residential  
15 care is no longer needed.

16 (iv) The child is living with a foster parent or Indian custodian  
17 who is unable or unwilling to adopt the child because of  
18 exceptional circumstances, that do not include an unwillingness  
19 to accept legal or financial responsibility for the child, but who is  
20 willing and capable of providing the child with a stable and  
21 permanent environment and the removal of the child from the  
22 physical custody of his or her foster parent or Indian custodian  
23 would be detrimental to the emotional well-being of the child. This  
24 clause does not apply to any child who is either (I) under six years  
25 of age or (II) a member of a sibling group where at least one child  
26 is under six years of age and the siblings are, or should be,  
27 permanently placed together.

28 (v) There would be substantial interference with a child’s sibling  
29 relationship, taking into consideration the nature and extent of the  
30 relationship, including, but not limited to, whether the child was  
31 raised with a sibling in the same home, whether the child shared  
32 significant common experiences or has existing close and strong  
33 bonds with a sibling, and whether ongoing contact is in the child’s  
34 best interest, including the child’s long-term emotional interest,  
35 as compared to the benefit of legal permanence through adoption.

36 (vi) The child is an Indian child and there is a compelling reason  
37 for determining that termination of parental rights would not be  
38 in the best interest of the child, including, but not limited to:

1 (I) Termination of parental rights would substantially interfere  
2 with the child's connection to his or her tribal community or the  
3 child's tribal membership rights.

4 (II) The child's tribe has identified guardianship, foster care  
5 with a fit and willing relative, tribal customary adoption, or another  
6 planned permanent living arrangement for the child.

7 (III) The child is a nonminor dependent, and the nonminor and  
8 the nonminor's tribe have identified tribal customary adoption for  
9 the nonminor.

10 (C) For purposes of subparagraph (B), in the case of tribal  
11 customary adoptions, Section 366.24 shall apply.

12 (D) If the court finds that termination of parental rights would  
13 be detrimental to the child pursuant to clause (i), (ii), (iii), (iv),  
14 (v), or (vi), it shall state its reasons in writing ~~or~~ *and* on the record.

15 (2) The court shall not terminate parental rights if:

16 (A) At each hearing at which the court was required to consider  
17 reasonable efforts or services, the court has found that reasonable  
18 efforts were not made or that reasonable services were not offered  
19 or provided.

20 (B) In the case of an Indian child:

21 (i) At the hearing terminating parental rights, the court has found  
22 that active efforts were not made as required in Section 361.7.

23 (ii) The court does not make a determination at the hearing  
24 terminating parental rights, supported by evidence beyond a  
25 reasonable doubt, including testimony of one or more "qualified  
26 expert witnesses" as defined in Section 224.6, that the continued  
27 custody of the child by the parent is likely to result in serious  
28 emotional or physical damage to the child.

29 (iii) The court has ordered tribal customary adoption pursuant  
30 to Section 366.24.

31 (3) If the court finds that termination of parental rights would  
32 not be detrimental to the child pursuant to paragraph (1) and that  
33 the child has a probability for adoption but is difficult to place for  
34 adoption and there is no identified or available prospective adoptive  
35 parent, the court may identify adoption as the permanent placement  
36 goal and without terminating parental rights, order that efforts be  
37 made to locate an appropriate adoptive family for the child, within  
38 the state or out of the state, within a period not to exceed 180 days.  
39 During this 180-day period, the public agency responsible for  
40 seeking adoptive parents for each child shall, to the extent possible,

1 ask each child who is 10 years of age or older, to identify any  
2 individuals, other than the child's siblings, who are important to  
3 the child, in order to identify potential adoptive parents. The public  
4 agency may ask any other child to provide that information, as  
5 appropriate. During the 180-day period, the public agency shall,  
6 to the extent possible, contact other private and public adoption  
7 agencies regarding the availability of the child for adoption. During  
8 the 180-day period, the public agency shall conduct the search for  
9 adoptive parents in the same manner as prescribed for children in  
10 Sections 8708 and 8709 of the Family Code. At the expiration of  
11 this period, another hearing shall be held and the court shall  
12 proceed pursuant to paragraph (1), (2), (3), (5), or (6) of subdivision  
13 (b). For purposes of this section, a child may only be found to be  
14 difficult to place for adoption if there is no identified or available  
15 prospective adoptive parent for the child because of the child's  
16 membership in a sibling group, or the presence of a diagnosed  
17 medical, physical, or mental handicap, or the child is seven years  
18 of age or more.

19 (4) (A) If the court finds that adoption of the child or  
20 termination of parental rights is not in the best interest of the child,  
21 because one of the conditions in clause (i), (ii), (iii), (iv), (v), or  
22 (vi) of subparagraph (B) of paragraph (1) or in paragraph (2)  
23 applies, the court shall order that the present caretakers or other  
24 appropriate persons shall become legal guardians of the child, or,  
25 in the case of an Indian child, consider a tribal customary adoption  
26 pursuant to Section 366.24. Legal guardianship shall be considered  
27 before continuing the child in foster care under any other permanent  
28 plan, if it is in the best interests of the child and if a suitable  
29 guardian can be found. If the child continues in foster care, the  
30 court shall make factual findings identifying any barriers to  
31 achieving adoption, tribal customary adoption in the case of an  
32 Indian child, legal guardianship, or placement with a fit and willing  
33 relative as of the date of the hearing. A child who is 10 years of  
34 age or older, shall be asked to identify any individuals, other than  
35 the child's siblings, who are important to the child, in order to  
36 identify potential guardians or, in the case of an Indian child,  
37 prospective tribal customary adoptive parents. The agency may  
38 ask any other child to provide that information, as appropriate.

39 (B) (i) If the child is living with an approved relative who is  
40 willing and capable of providing a stable and permanent



1 environment, but not willing to become a legal guardian as of the  
2 hearing date, the court shall order a permanent plan of placement  
3 with a fit and willing relative, and the child shall not be removed  
4 from the home if the court finds the removal would be seriously  
5 detrimental to the emotional well-being of the child because the  
6 child has substantial psychological ties to the relative caretaker.

7 (ii) If the child is living with a nonrelative caregiver who is  
8 willing and capable of providing a stable and permanent  
9 environment, but not willing to become a legal guardian as of the  
10 hearing date, the court shall order that the child remain in foster  
11 care with a permanent plan of return home, adoption, legal  
12 guardianship, or placement with a fit and willing relative, as  
13 appropriate. If the child is 16 years of age or older, or a nonminor  
14 dependent, and no other permanent plan is appropriate at the time  
15 of the hearing, the court may order another planned permanent  
16 living arrangement, as described in paragraph (2) of subdivision  
17 (i) of Section 16501. Regardless of the age of the child, the child  
18 shall not be removed from the home if the court finds the removal  
19 would be seriously detrimental to the emotional well-being of the  
20 child because the child has substantial psychological ties to the  
21 caregiver.

22 (iii) If the child is living in a group home or, on or after January  
23 1, 2017, a short-term residential treatment center, the court shall  
24 order that the child remain in foster care with a permanent plan of  
25 return home, adoption, tribal customary adoption in the case of an  
26 Indian child, legal guardianship, or placement with a fit and willing  
27 relative, as appropriate. If the child is 16 years of age or older, or  
28 a nonminor dependent, and no other permanent plan is appropriate  
29 at the time of the hearing, the court may order another planned  
30 permanent living arrangement, as described in paragraph (2) of  
31 subdivision (i) of Section 16501.

32 (C) The court shall also make an order for visitation with the  
33 parents or guardians unless the court finds by a preponderance of  
34 the evidence that the visitation would be detrimental to the physical  
35 or emotional well-being of the child.

36 (5) If the court finds that the child should not be placed for  
37 adoption, that legal guardianship shall not be established, that  
38 placement with a fit and willing relative is not appropriate as of  
39 the hearing date, and that there are no suitable foster parents except  
40 exclusive-use homes available to provide the child with a stable

1 and permanent environment, the court may order the care, custody,  
2 and control of the child transferred from the county welfare  
3 department to a licensed foster family agency. The court shall  
4 consider the written recommendation of the county welfare director  
5 regarding the suitability of the transfer. The transfer shall be subject  
6 to further court orders.

7 The licensed foster family agency shall place the child in a  
8 suitable licensed or exclusive-use home that has been certified by  
9 the agency as meeting licensing standards. The licensed foster  
10 family agency shall be responsible for supporting the child and  
11 providing appropriate services to the child, including those services  
12 ordered by the court. Responsibility for the support of the child  
13 shall not, in and of itself, create liability on the part of the foster  
14 family agency to third persons injured by the child. Those children  
15 whose care, custody, and control are transferred to a foster family  
16 agency shall not be eligible for foster care maintenance payments  
17 or child welfare services, except for emergency response services  
18 pursuant to Section 16504.

19 (d) The proceeding for the appointment of a guardian for a child  
20 who is a dependent of the juvenile court shall be in the juvenile  
21 court. If the court finds pursuant to this section that legal  
22 guardianship is the appropriate permanent plan, it shall appoint  
23 the legal guardian and issue letters of guardianship. The assessment  
24 prepared pursuant to subdivision (g) of Section 361.5, subdivision  
25 (i) of Section 366.21, subdivision (b) of Section 366.22, and  
26 subdivision (b) of Section 366.25 shall be read and considered by  
27 the court prior to the appointment, and this shall be reflected in  
28 the minutes of the court. The person preparing the assessment may  
29 be called and examined by any party to the proceeding.

30 (e) (1) The proceeding for the adoption of a child who is a  
31 dependent of the juvenile court shall be in the juvenile court if the  
32 court finds pursuant to this section that adoption is the appropriate  
33 permanent plan and the petition for adoption is filed in the juvenile  
34 court. Upon the filing of a petition for adoption, the juvenile court  
35 shall order that an adoption hearing be set. The court shall proceed  
36 with the adoption after the appellate rights of the natural parents  
37 have been exhausted. The full report required by Section 8715 of  
38 the Family Code shall be read and considered by the court prior  
39 to the adoption and this shall be reflected in the minutes of the  
40 court. The person preparing the report may be called and examined

1 by any party to the proceeding. It is the intent of the Legislature,  
2 pursuant to this subdivision, to give potential adoptive parents the  
3 option of filing in the juvenile court the petition for the adoption  
4 of a child who is a dependent of the juvenile court. Nothing in this  
5 section is intended to prevent the filing of a petition for adoption  
6 in any other court as permitted by law, instead of in the juvenile  
7 court.

8 (2) In the case of an Indian child, if the Indian child's tribe has  
9 elected a permanent plan of tribal customary adoption, the court,  
10 upon receiving the tribal customary adoption order will afford the  
11 tribal customary adoption order full faith and credit to the same  
12 extent that the court would afford full faith and credit to the public  
13 acts, records, judicial proceedings, and judgments of any other  
14 entity. Upon a determination that the tribal customary adoption  
15 order may be afforded full faith and credit, consistent with Section  
16 224.5, the court shall thereafter order a hearing to finalize the  
17 adoption be set upon the filing of the adoption petition. The  
18 prospective tribal customary adoptive parents and the child who  
19 is the subject of the tribal customary adoption petition shall appear  
20 before the court for the finalization hearing. The court shall  
21 thereafter issue an order of adoption pursuant to Section 366.24.

22 (3) If a child who is the subject of a finalized tribal customary  
23 adoption shows evidence of a developmental disability or mental  
24 illness as a result of conditions existing before the tribal customary  
25 adoption to the extent that the child cannot be relinquished to a  
26 licensed adoption agency on the grounds that the child is considered  
27 unadoptable, and of which condition the tribal customary adoptive  
28 parent or parents had no knowledge or notice before the entry of  
29 the tribal customary adoption order, a petition setting forth those  
30 facts may be filed by the tribal customary adoptive parent or  
31 parents with the juvenile court that granted the tribal customary  
32 adoption petition. If these facts are proved to the satisfaction of  
33 the juvenile court, it may make an order setting aside the tribal  
34 customary adoption order. The set-aside petition shall be filed  
35 within five years of the issuance of the tribal customary adoption  
36 order. The court clerk shall immediately notify the child's tribe  
37 and the department in Sacramento of the petition within 60 days  
38 after the notice of filing of the petition. The department shall file  
39 a full report with the court and shall appear before the court for  
40 the purpose of representing the child. Whenever a final decree of

1 tribal customary adoption has been vacated or set aside, the child  
2 shall be returned to the custody of the county in which the  
3 proceeding for tribal customary adoption was finalized. The  
4 biological parent or parents of the child may petition for return of  
5 custody. The disposition of the child after the court has entered an  
6 order to set aside a tribal customary adoption shall include  
7 consultation with the child's tribe.

8 (f) At the beginning of any proceeding pursuant to this section,  
9 if the child or the parents are not being represented by previously  
10 retained or appointed counsel, the court shall proceed as follows:

11 (1) In accordance with subdivision (c) of Section 317, if a child  
12 before the court is without counsel, the court shall appoint counsel  
13 unless the court finds that the child would not benefit from the  
14 appointment of counsel. The court shall state on the record its  
15 reasons for that finding.

16 (2) If a parent appears without counsel and is unable to afford  
17 counsel, the court shall appoint counsel for the parent, unless this  
18 representation is knowingly and intelligently waived. The same  
19 counsel shall not be appointed to represent both the child and his  
20 or her parent. The public defender or private counsel may be  
21 appointed as counsel for the parent.

22 (3) Private counsel appointed under this section shall receive a  
23 reasonable sum for compensation and expenses, the amount of  
24 which shall be determined by the court. The amount shall be paid  
25 by the real parties in interest, other than the child, in any  
26 proportions the court deems just. However, if the court finds that  
27 any of the real parties in interest are unable to afford counsel, the  
28 amount shall be paid out of the general fund of the county.

29 (g) The court may continue the proceeding for a period of time  
30 not to exceed 30 days as necessary to appoint counsel, and to  
31 enable counsel to become acquainted with the case.

32 (h) (1) At all proceedings under this section, the court shall  
33 consider the wishes of the child and shall act in the best interests  
34 of the child.

35 (2) In accordance with Section 349, the child shall be present  
36 in court if the child or the child's counsel so requests or the court  
37 so orders. If the child is 10 years of age or older and is not present  
38 at a hearing held pursuant to this section, the court shall determine  
39 whether the minor was properly notified of his or her right to attend  
40 the hearing and inquire as to the reason why the child is not present.

1 (3) (A) The testimony of the child may be taken in chambers  
2 and outside the presence of the child's parent or parents, if the  
3 child's parent or parents are represented by counsel, the counsel  
4 is present, and any of the following circumstances exists:

5 (i) The court determines that testimony in chambers is necessary  
6 to ensure truthful testimony.

7 (ii) The child is likely to be intimidated by a formal courtroom  
8 setting.

9 (iii) The child is afraid to testify in front of his or her parent or  
10 parents.

11 (B) After testimony in chambers, the parent or parents of the  
12 child may elect to have the court reporter read back the testimony  
13 or have the testimony summarized by counsel for the parent or  
14 parents.

15 (C) The testimony of a child also may be taken in chambers and  
16 outside the presence of the guardian or guardians of a child under  
17 the circumstances specified in this subdivision.

18 (i) (1) Any order of the court permanently terminating parental  
19 rights under this section shall be conclusive and binding upon the  
20 child, upon the parent or parents and upon all other persons who  
21 have been served with citation by publication or otherwise as  
22 provided in this chapter. After making the order, the juvenile court  
23 shall have no power to set aside, change, or modify it, except as  
24 provided in paragraph (2), but nothing in this section shall be  
25 construed to limit the right to appeal the order.

26 (2) A tribal customary adoption order evidencing that the Indian  
27 child has been the subject of a tribal customary adoption shall be  
28 afforded full faith and credit and shall have the same force and  
29 effect as an order of adoption authorized by this section. The rights  
30 and obligations of the parties as to the matters determined by the  
31 Indian child's tribe shall be binding on all parties. A court shall  
32 not order compliance with the order absent a finding that the party  
33 seeking the enforcement participated, or attempted to participate,  
34 in good faith, in family mediation services of the court or dispute  
35 resolution through the tribe regarding the conflict, prior to the  
36 filing of the enforcement action.

37 (3) A child who has not been adopted after the passage of at  
38 least three years from the date the court terminated parental rights  
39 and for whom the court has determined that adoption is no longer  
40 the permanent plan may petition the juvenile court to reinstate

parental rights pursuant to the procedure prescribed by Section 388. The child may file the petition prior to the expiration of this three-year period if the State Department of Social Services, county adoption agency, or licensed adoption agency that is responsible for custody and supervision of the child as described in subdivision (j) and the child stipulate that the child is no longer likely to be adopted. A child over 12 years of age shall sign the petition in the absence of a showing of good cause as to why the child could not do so. If it appears that the best interests of the child may be promoted by reinstatement of parental rights, the court shall order that a hearing be held and shall give prior notice, or cause prior notice to be given, to the social worker or probation officer and to the child's attorney of record, or, if there is no attorney of record for the child, to the child, and the child's tribe, if applicable, by means prescribed by subdivision (c) of Section 297. The court shall order the child or the social worker or probation officer to give prior notice of the hearing to the child's former parent or parents whose parental rights were terminated in the manner prescribed by subdivision (f) of Section 294 where the recommendation is adoption. The juvenile court shall grant the petition if it finds by clear and convincing evidence that the child is no longer likely to be adopted and that reinstatement of parental rights is in the child's best interest. If the court reinstates parental rights over a child who is under 12 years of age and for whom the new permanent plan will not be reunification with a parent or legal guardian, age, the court shall specify *in writing* the factual basis for its findings that it is in the best interest of the child to reinstate parental rights. This subdivision is intended to be retroactive and applies to any child who is under the jurisdiction of the juvenile court at the time of the hearing regardless of the date parental rights were terminated.

(j) If the court, by order or judgment, declares the child free from the custody and control of both parents, or one parent if the other does not have custody and control, or declares the child eligible for tribal customary adoption, the court shall at the same time order the child referred to the State Department of Social Services, county adoption agency, or licensed adoption agency for adoptive placement by the agency. However, except in the case of a tribal customary adoption where there is no termination of parental rights, a petition for adoption may not be granted until

1 the appellate rights of the natural parents have been exhausted.  
2 The State Department of Social Services, county adoption agency,  
3 or licensed adoption agency shall be responsible for the custody  
4 and supervision of the child and shall be entitled to the exclusive  
5 care and control of the child at all times until a petition for adoption  
6 or tribal customary adoption is granted, except as specified in  
7 subdivision (n). With the consent of the agency, the court may  
8 appoint a guardian of the child, who shall serve until the child is  
9 adopted.

10 (k) Notwithstanding any other law, the application of any person  
11 who, as a relative caretaker or foster parent, has cared for a  
12 dependent child for whom the court has approved a permanent  
13 plan for adoption, or who has been freed for adoption, shall be  
14 given preference with respect to that child over all other  
15 applications for adoptive placement if the agency making the  
16 placement determines that the child has substantial emotional ties  
17 to the relative caretaker or foster parent and removal from the  
18 relative caretaker or foster parent would be seriously detrimental  
19 to the child's emotional well-being.

20 As used in this subdivision, "preference" means that the  
21 application shall be processed and, if satisfactory, the family study  
22 shall be completed before the processing of the application of any  
23 other person for the adoptive placement of the child.

24 (l) (1) An order by the court that a hearing pursuant to this  
25 section be held is not appealable at any time unless all of the  
26 following apply:

27 (A) A petition for extraordinary writ review was filed in a timely  
28 manner.

29 (B) The petition substantively addressed the specific issues to  
30 be challenged and supported that challenge by an adequate record.

31 (C) The petition for extraordinary writ review was summarily  
32 denied or otherwise not decided on the merits.

33 (2) Failure to file a petition for extraordinary writ review within  
34 the period specified by rule, to substantively address the specific  
35 issues challenged, or to support that challenge by an adequate  
36 record shall preclude subsequent review by appeal of the findings  
37 and orders made pursuant to this section.

38 (3) The Judicial Council shall adopt rules of court, effective  
39 January 1, 1995, to ensure all of the following:

1 (A) A trial court, after issuance of an order directing a hearing  
2 pursuant to this section be held, shall advise all parties of the  
3 requirement of filing a petition for extraordinary writ review as  
4 set forth in this subdivision in order to preserve any right to appeal  
5 in these issues. This notice shall be made orally to a party if the  
6 party is present at the time of the making of the order or by  
7 first-class mail by the clerk of the court to the last known address  
8 of a party not present at the time of the making of the order.

9 (B) The prompt transmittal of the records from the trial court  
10 to the appellate court.

11 (C) That adequate time requirements for counsel and court  
12 personnel exist to implement the objective of this subdivision.

13 (D) That the parent or guardian, or their trial counsel or other  
14 counsel, is charged with the responsibility of filing a petition for  
15 extraordinary writ relief pursuant to this subdivision.

16 (4) The intent of this subdivision is to do both of the following:

17 (A) Make every reasonable attempt to achieve a substantive and  
18 meritorious review by the appellate court within the time specified  
19 in Sections 366.21, 366.22, and 366.25 for holding a hearing  
20 pursuant to this section.

21 (B) Encourage the appellate court to determine all writ petitions  
22 filed pursuant to this subdivision on their merits.

23 (5) This subdivision shall only apply to cases in which an order  
24 to set a hearing pursuant to this section is issued on or after January  
25 1, 1995.

26 (m) Except for subdivision (j), this section shall also apply to  
27 minors adjudged wards pursuant to Section 727.31.

28 (n) (1) Notwithstanding Section 8704 of the Family Code or  
29 any other law, the court, at a hearing held pursuant to this section  
30 or anytime thereafter, may designate a current caretaker as a  
31 prospective adoptive parent if the child has lived with the caretaker  
32 for at least six months, the caretaker currently expresses a  
33 commitment to adopt the child, and the caretaker has taken at least  
34 one step to facilitate the adoption process. In determining whether  
35 to make that designation, the court may take into consideration  
36 whether the caretaker is listed in the preliminary assessment  
37 prepared by the county department in accordance with subdivision  
38 (i) of Section 366.21 as an appropriate person to be considered as  
39 an adoptive parent for the child and the recommendation of the



1 State Department of Social Services, county adoption agency, or  
2 licensed adoption agency.

3 (2) For purposes of this subdivision, steps to facilitate the  
4 adoption process include, but are not limited to, the following:

5 (A) Applying for an adoption home study.

6 (B) Cooperating with an adoption home study.

7 (C) Being designated by the court or the adoption agency as the  
8 adoptive family.

9 (D) Requesting de facto parent status.

10 (E) Signing an adoptive placement agreement.

11 (F) Engaging in discussions regarding a postadoption contact  
12 agreement.

13 (G) Working to overcome any impediments that have been  
14 identified by the State Department of Social Services, county  
15 adoption agency, or licensed adoption agency.

16 (H) Attending classes required of prospective adoptive parents.

17 (3) Prior to a change in placement and as soon as possible after  
18 a decision is made to remove a child from the home of a designated  
19 prospective adoptive parent, the agency shall notify the court, the  
20 designated prospective adoptive parent or the current caretaker, if  
21 that caretaker would have met the threshold criteria to be  
22 designated as a prospective adoptive parent pursuant to paragraph  
23 (1) on the date of service of this notice, the child's attorney, and  
24 the child, if the child is 10 years of age or older, of the proposal  
25 in the manner described in Section 16010.6.

26 (A) Within five court days or seven calendar days, whichever  
27 is longer, of the date of notification, the child, the child's attorney,  
28 or the designated prospective adoptive parent may file a petition  
29 with the court objecting to the proposal to remove the child, or the  
30 court, upon its own motion, may set a hearing regarding the  
31 proposal. The court may, for good cause, extend the filing period.  
32 A caretaker who would have met the threshold criteria to be  
33 designated as a prospective adoptive parent pursuant to paragraph  
34 (1) on the date of service of the notice of proposed removal of the  
35 child may file, together with the petition under this subparagraph,  
36 a petition for an order designating the caretaker as a prospective  
37 adoptive parent for purposes of this subdivision.

38 (B) A hearing ordered pursuant to this paragraph shall be held  
39 as soon as possible and not later than five court days after the  
40 petition is filed with the court or the court sets a hearing upon its

1 own motion, unless the court for good cause is unable to set the  
2 matter for hearing five court days after the petition is filed, in  
3 which case the court shall set the matter for hearing as soon as  
4 possible. At the hearing, the court shall determine whether the  
5 caretaker has met the threshold criteria to be designated as a  
6 prospective adoptive parent pursuant to paragraph (1), and whether  
7 the proposed removal of the child from the home of the designated  
8 prospective adoptive parent is in the child's best interest, and the  
9 child may not be removed from the home of the designated  
10 prospective adoptive parent unless the court finds that removal is  
11 in the child's best interest. If the court determines that the caretaker  
12 did not meet the threshold criteria to be designated as a prospective  
13 adoptive parent on the date of service of the notice of proposed  
14 removal of the child, the petition objecting to the proposed removal  
15 filed by the caretaker shall be dismissed. If the caretaker was  
16 designated as a prospective adoptive parent prior to this hearing,  
17 the court shall inquire into any progress made by the caretaker  
18 towards the adoption of the child since the caretaker was designated  
19 as a prospective adoptive parent.

20 (C) A determination by the court that the caretaker is a  
21 designated prospective adoptive parent pursuant to paragraph (1)  
22 or subparagraph (B) does not make the caretaker a party to the  
23 dependency proceeding nor does it confer on the caretaker any  
24 standing to object to any other action of the department, county  
25 adoption agency, or licensed adoption agency, unless the caretaker  
26 has been declared a de facto parent by the court prior to the notice  
27 of removal served pursuant to paragraph (3).

28 (D) If a petition objecting to the proposal to remove the child  
29 is not filed, and the court, upon its own motion, does not set a  
30 hearing, the child may be removed from the home of the designated  
31 prospective adoptive parent without a hearing.

32 (4) Notwithstanding paragraph (3), if the State Department of  
33 Social Services, county adoption agency, or licensed adoption  
34 agency determines that the child must be removed from the home  
35 of the caretaker who is or may be a designated prospective adoptive  
36 parent immediately, due to a risk of physical or emotional harm,  
37 the agency may remove the child from that home and is not  
38 required to provide notice prior to the removal. However, as soon  
39 as possible and not longer than two court days after the removal,  
40 the agency shall notify the court, the caretaker who is or may be

1 a designated prospective adoptive parent, the child's attorney, and  
2 the child, if the child is 10 years of age or older, of the removal.  
3 Within five court days or seven calendar days, whichever is longer,  
4 of the date of notification of the removal, the child, the child's  
5 attorney, or the caretaker who is or may be a designated prospective  
6 adoptive parent may petition for, or the court on its own motion  
7 may set, a noticed hearing pursuant to paragraph (3). The court  
8 may, for good cause, extend the filing period.

9 (5) Except as provided in subdivision (b) of Section 366.28, an  
10 order by the court issued after a hearing pursuant to this subdivision  
11 shall not be appealable.

12 (6) Nothing in this section shall preclude a county child  
13 protective services agency from fully investigating and responding  
14 to alleged abuse or neglect of a child pursuant to Section 11165.5  
15 of the Penal Code.

16 (7) The Judicial Council shall prepare forms to facilitate the  
17 filing of the petitions described in this subdivision, which shall  
18 become effective on January 1, 2006.

19 *SEC. 5. Section 398 is added to the Welfare and Institutions*  
20 *Code, to read:*

21 *398. At the time a child is being considered for placement in*  
22 *a foster home, the social worker shall provide to the foster parents*  
23 *all of the following:*

24 *(a) Notification that he or she has the right to be present at the*  
25 *dispositional hearing and at any hearing thereafter at which the*  
26 *status of the child is at issue.*

27 *(b) Information regarding de facto parent status and the manner*  
28 *in which a foster parent can apply to the juvenile court to become*  
29 *a de facto parent.*

30 *(c) Notification that if the child reenters foster care, the foster*  
31 *parents of the child have the right to be provided written notice*  
32 *from the court if the child, after being reunified with his or her*  
33 *parents, is returned to the court for further dependency*  
34 *proceedings.*

35 *SEC. 6. To the extent that this act has an overall effect of*  
36 *increasing the costs already borne by a local agency for programs*  
37 *or levels of service mandated by the 2011 Realignment Legislation*  
38 *within the meaning of Section 36 of Article XIII of the California*  
39 *Constitution, it shall apply to local agencies only to the extent that*  
40 *the state provides annual funding for the cost increase. Any new*

1 *program or higher level of service provided by a local agency*  
2 *pursuant to this act above the level for which funding has been*  
3 *provided shall not require a subvention of funds by the state nor*  
4 *otherwise be subject to Section 6 of Article XIII B of the California*  
5 *Constitution.*

6 SECTION 1. ~~Section 300 of the Welfare and Institutions Code~~  
7 ~~is amended to read:~~

8 ~~300. — A child who comes within any of the following~~  
9 ~~descriptions is within the jurisdiction of the juvenile court which~~  
10 ~~may adjudge that person to be a dependent child of the court:~~

11 ~~(a) The child has suffered, or there is a substantial risk that the~~  
12 ~~child will suffer, serious physical harm inflicted nonaccidentally~~  
13 ~~upon the child by the child's parent or guardian. For purposes of~~  
14 ~~this subdivision, a court may find there is a substantial risk of~~  
15 ~~serious future injury based on the manner in which a less serious~~  
16 ~~injury was inflicted, a history of repeated inflictions of injuries on~~  
17 ~~the child or the child's siblings, or a combination of these and other~~  
18 ~~actions by the parent or guardian that indicate the child is at risk~~  
19 ~~of serious physical harm. For purposes of this subdivision, "serious~~  
20 ~~physical harm" does not include reasonable and age-appropriate~~  
21 ~~spanking to the buttocks if there is no evidence of serious physical~~  
22 ~~injury.~~

23 ~~(b) (1) The child has suffered, or there is a substantial risk that~~  
24 ~~the child will suffer, serious physical harm or illness, as a result~~  
25 ~~of the failure or inability of his or her parent or guardian to~~  
26 ~~adequately supervise or protect the child, or the willful or negligent~~  
27 ~~failure of the child's parent or guardian to adequately supervise~~  
28 ~~or protect the child from the conduct of the custodian with whom~~  
29 ~~the child has been left, or by the willful or negligent failure of the~~  
30 ~~parent or guardian to provide the child with adequate food,~~  
31 ~~clothing, shelter, or medical treatment, or by the inability of the~~  
32 ~~parent or guardian to provide regular care for the child due to the~~  
33 ~~parent's or guardian's mental illness, developmental disability, or~~  
34 ~~substance abuse. A child shall not be found to be a person described~~  
35 ~~by this subdivision solely due to the lack of an emergency shelter~~  
36 ~~for the family. Whenever it is alleged that a child comes within~~  
37 ~~the jurisdiction of the court on the basis of the parent's or~~  
38 ~~guardian's willful failure to provide adequate medical treatment~~  
39 ~~or specific decision to provide spiritual treatment through prayer,~~  
40 ~~the court shall give deference to the parent's or guardian's medical~~

1 treatment, nontreatment, or spiritual treatment through prayer alone  
2 in accordance with the tenets and practices of a recognized church  
3 or religious denomination, by an accredited practitioner thereof,  
4 and shall not assume jurisdiction unless necessary to protect the  
5 child from suffering serious physical harm or illness. In making  
6 its determination, the court shall consider (1) the nature of the  
7 treatment proposed by the parent or guardian, (2) the risks to the  
8 child posed by the course of treatment or nontreatment proposed  
9 by the parent or guardian, (3) the risk, if any, of the course of  
10 treatment being proposed by the petitioning agency, and (4) the  
11 likely success of the courses of treatment or nontreatment proposed  
12 by the parent or guardian and agency. The child shall continue to  
13 be a dependent child pursuant to this subdivision only so long as  
14 is necessary to protect the child from risk of suffering serious  
15 physical harm or illness.

16 (2) The Legislature finds and declares that a child who is  
17 sexually trafficked, as described in Section 236.1 of the Penal  
18 Code, or who receives food or shelter in exchange for, or who is  
19 paid to perform, sexual acts described in Section 236.1 or 11165.1  
20 of the Penal Code, and whose parent or guardian failed to, or was  
21 unable to, protect the child, is within the description of this  
22 subdivision, and that this finding is declaratory of existing law.  
23 These children shall be known as commercially sexually exploited  
24 children.

25 (c) The child is suffering serious emotional damage, or is at  
26 substantial risk of suffering serious emotional damage, evidenced  
27 by severe anxiety, depression, withdrawal, or untoward aggressive  
28 behavior toward self or others, as a result of the conduct of the  
29 parent or guardian or who has no parent or guardian capable of  
30 providing appropriate care. A child shall not be found to be a  
31 person described by this subdivision if the willful failure of the  
32 parent or guardian to provide adequate mental health treatment is  
33 based on a sincerely held religious belief and if a less intrusive  
34 judicial intervention is available.

35 (d) The child has been sexually abused, or there is a substantial  
36 risk that the child will be sexually abused, as defined in Section  
37 11165.1 of the Penal Code, by his or her parent or guardian or a  
38 member of his or her household, or the parent or guardian has  
39 failed to adequately protect the child from sexual abuse when the

1 ~~parent or guardian knew or reasonably should have known that~~  
2 ~~the child was in danger of sexual abuse.~~

3 ~~(e) (1) The child is under the age of five years and has suffered~~  
4 ~~severe physical abuse by a parent, or by a person known by the~~  
5 ~~parent, if the parent knew or reasonably should have known that~~  
6 ~~the person was physically abusing the child. For the purposes of~~  
7 ~~this subdivision, “severe physical abuse” means any of the~~  
8 ~~following:~~

9 ~~(A) A single act of abuse which causes physical trauma of~~  
10 ~~sufficient severity that, if left untreated, would cause permanent~~  
11 ~~physical disfigurement, permanent physical disability, or death.~~

12 ~~(B) A single act of sexual abuse which causes significant~~  
13 ~~bleeding, deep bruising, or significant external or internal swelling.~~

14 ~~(C) More than one act of physical abuse, each of which causes~~  
15 ~~bleeding, deep bruising, significant external or internal swelling,~~  
16 ~~bone fracture, or unconsciousness.~~

17 ~~(D) The willful, prolonged failure to provide adequate food.~~

18 ~~(2) A child shall not be removed from the physical custody of~~  
19 ~~his or her parent or guardian on the basis of a finding of severe~~  
20 ~~physical abuse unless the social worker has made an allegation of~~  
21 ~~severe physical abuse pursuant to Section 332.~~

22 ~~(f) The child’s parent or guardian caused the death of another~~  
23 ~~child through abuse or neglect.~~

24 ~~(g) The child has been left without any provision for support;~~  
25 ~~physical custody of the child has been voluntarily surrendered~~  
26 ~~pursuant to Section 1255.7 of the Health and Safety Code and the~~  
27 ~~child has not been reclaimed within the 14-day period specified~~  
28 ~~in subdivision (g) of that section; the child’s parent has been~~  
29 ~~incarcerated or institutionalized and cannot arrange for the care of~~  
30 ~~the child; or a relative or other adult custodian with whom the child~~  
31 ~~resides or has been left is unwilling or unable to provide care or~~  
32 ~~support for the child, the whereabouts of the parent are unknown,~~  
33 ~~and reasonable efforts to locate the parent have been unsuccessful.~~

34 ~~(h) The child has been freed for adoption by one or both parents~~  
35 ~~for 12 months by either relinquishment or termination of parental~~  
36 ~~rights or an adoption petition has not been granted.~~

37 ~~(i) The child has been subjected to an act or acts of cruelty by~~  
38 ~~the parent or guardian or a member of his or her household, or the~~  
39 ~~parent or guardian has failed to adequately protect the child from~~  
40 ~~an act or acts of cruelty when the parent or guardian knew or~~

1 reasonably should have known that the child was in danger of  
2 being subjected to an act or acts of cruelty.

3 (j) The child's sibling has been abused or neglected, as defined  
4 in subdivision (a), (b), (d), (e), or (i), and there is a substantial risk  
5 that the child will be abused or neglected, as defined in those  
6 subdivisions. The court shall consider the circumstances  
7 surrounding the abuse or neglect of the sibling, the age and gender  
8 of each child, the nature of the abuse or neglect of the sibling, the  
9 mental condition of the parent or guardian, and any other factors  
10 the court considers probative in determining whether there is a  
11 substantial risk to the child.

12 It is the intent of the Legislature that this section not disrupt the  
13 family unnecessarily or intrude inappropriately into family life,  
14 prohibit the use of reasonable methods of parental discipline, or  
15 prescribe a particular method of parenting. Further, this section is  
16 not intended to limit the offering of voluntary services to those  
17 families in need of assistance but who do not come within the  
18 descriptions of this section. To the extent that savings accrue to  
19 the state from child welfare services funding obtained as a result  
20 of the enactment of the act that enacted this section, those savings  
21 shall be used to promote services which support family  
22 maintenance and family reunification plans, such as client  
23 transportation, out-of-home respite care, parenting training, and  
24 the provision of temporary or emergency in-home caretakers and  
25 persons teaching and demonstrating homemaking skills. The  
26 Legislature further declares that a physical disability, such as  
27 blindness or deafness, is no bar to the raising of happy and  
28 well-adjusted children and that a court's determination pursuant  
29 to this section shall center upon whether a parent's disability  
30 prevents him or her from exercising care and control. The  
31 Legislature further declares that a child whose parent has been  
32 adjudged a dependent child of the court pursuant to this section  
33 shall not be considered to be at risk of abuse or neglect solely  
34 because of the age, dependent status, or foster care status of the  
35 parent.

36 As used in this section, "guardian" means the legal guardian of  
37 the child.